

# CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES  
ISSUED BY STATE BOARD OF ACCOUNTS

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March 2013

## JUNE TRAINING SCHOOL

This year's June Training School will be held in Fort Wayne as part of the Indiana League of Municipal Clerks and Treasurers' Annual Conference during the week of June 9 through June 13, 2013.

The Conference and School will be held at the Grand Wayne Center, which is located in downtown Fort Wayne at 120 West Jefferson Boulevard.

The State Board of Accounts will be conducting two (2) days of training (June 11 and 12) at the Conference which will be State-called meeting days.

Please mark these dates on your calendar. An explanatory letter along with a tentative agenda will be sent out prior to the meeting.

## STATE AND FEDERAL MILEAGE RATES

The current mileage rate paid to State Employees in travel status is 44 cents per mile.

It is our understanding that the Federal mileage rate was raised from 55 and ½ cents to 56 and ½ cents effective January 1, 2013.

## SEATBELT VIOLATIONS

Official Opinion No. 2003-2, issued by the office of the Attorney General, answers several questions regarding cities and towns establishing local ordinances governing seatbelt violations and retaining the fines for such violations. A summary of the opinion follows.

## QUESTIONS

Question 1. May a city or town enact a local ordinance that is similar to an existing state statute in order to capture the revenue generated by any resulting fines levied by the city or town for violations of the local ordinance?

### **QUESTIONS (Continued)**

Question 2. Does state law prohibit a city or town from enacting a local ordinance that mirrors an existing state statute in order to capture the revenue generated by any resulting fines levied by the city or town for violations of the local ordinance?

Question 3. Does state law allow or specifically prohibit a city or town from enacting a seat belt ordinance, which is similar to the existing state statute regarding seat belts, in order to allow the city to keep the revenue generated by the levied fines at the local level in lieu of returning those fines to the state?

Question 4. How would such a seat belt ordinance differ from other local ordinances that mirror state law such as fines levied from infractions like speeding?

### **BRIEF ANSWERS**

Questions 1 & 2: The Home Rule Act expressly prohibits local units of government from adopting local ordinances which assign a penalty for an act that constitutes a crime or infraction under state statute. A state statute must be evaluated to determine if the statute deals comprehensively with a subject matter and there is room for supplemental local regulation. However, a city or town may not enact a local ordinance where there is an existing state statute dealing comprehensively with the subject matter and local law is considered preempted by state law.

Question 3: The General Assembly has preempted any local initiatives regarding motor vehicle equipment, such as seatbelts, by enacting comprehensive statewide laws regarding such equipment and by withholding any reference to a local unit's specific statutory authority to supplement the state law. Funds collected as judgments for violations of state statutes regarding seat belt violations are required by statute to be deposited in the state general fund.

Question 4: The General Assembly has established uniform and comprehensive state standards for motor vehicle equipment and has withheld from local units any statutory authority to supplement state laws on the matter. Conversely, when enacting state laws regulating the movement of traffic, the legislature contemplated the need for additional local regulations addressing particular local needs, such as speed, and specifically granted local units the statutory authority to supplement state law.

### **CONCLUSION**

It is my opinion that the Home Rule Act prohibits local units of government from adopting any local ordinance that prescribes a penalty for conduct constituting an infraction under any Indiana Code provision regarding seat belt use. At the same time, the state law that requires funds collected as judgments for infraction violations be deposited into the state general fund preempts any local ordinance designating the funds be deposited otherwise.

### **COMPENSATION – ANNUAL SALARIES – PROPER PAYMENTS**

Indiana statutes require salary ordinances to be enacted annually for all elected and appointed city and town officials and employees. Historically, even dollar amounts such as \$20,000 are set as an annual salary for an employee. With a bi-weekly payroll period established for the unit, it becomes difficult to pay an employee the exact amount of his/her annual salary since twenty-six payrolls (in some years there are twenty-seven) will not divide evenly. Unless an odd amount is paid for the last payroll period, the employee is either over or under paid the amount established in the salary ordinance causing either an unhappy employee or an unhappy local fiscal officer.

It is suggested for salary ordinances enacted in 2003 and all future periods, the employee salaries be established to coincide with the customary work and pay period. (For example, instead of \$20,000 annually, adopt \$385.00 weekly or \$770.00 bi-weekly.) By using this method it will make no difference if there are 52 or 53 weekly pays or 26 or 27 bi-weekly pays.

When using this suggestion and preparing your budget, it will be imperative the proper number of pays be computed in order to not under-estimate your next year's requirements for personal services and associated fringe benefits. Keep in mind that the salary ordinance and the budget ordinance are two different statutory requirements. You should not attempt to combine the ordinances.

### **JOINT AIRPORT AUTHORITIES**

IC 8-22-4 authorizes border counties and cities in border counties in Indiana to join with counties and cities in adjoining states to form a joint airport authority.

### **REDEVELOPMENT – SALE AND LEASE OF REAL ESTATE TO OTHER PUBLIC AGENCIES**

IC 36-7-14-22(a) authorizes the department of redevelopment to have sales, enter into leases or other dispositions of acquired real property to other public agencies for public purposes without following the publication and bidding procedures required for sales or leases to other parties.

### **REDEVELOPMENT – REAL ESTATE NOT SUBJECT TO TAXATION**

IC 36-7-14-37 states that real property acquired by a redevelopment district is exempt from taxation while owned by the district.

### **INDUSTRIAL DEVELOPMENT**

IC 36-7-13-3 authorizes any city or town to acquire by purchase, gift, or devise, and own, improve, maintain, sell, lease, convey, contract for, or otherwise deal in, real property for the development of industrial parks or industrial sites. Such development may be in areas within five (5) miles outside its corporate boundaries.

“Improve” is defined to mean construct, reconstruct, or repair public ways, sidewalks, sewers, drains, fences or buildings, and to do all other things that would enhance the value of real property and make it more suitable to industrial use.

**CLERK – TREASURER – RESIDENCE REQUIREMENTS**

City - IC 36-4-10-3 and IC 3-8-1-28 state that a person is eligible for the office of clerk-treasurer only if they have been a resident of the city for at least one (1) year immediately preceding the election. The clerk-treasurer forfeits his/her office if they cease to be a resident of the city.

Town – IC 36-5-6-3 states that the town clerk-treasurer must reside within the town. The clerk-treasurer forfeits his/her office when he/she ceases to be a resident of the town.

**CONFLICT OF INTEREST**

IC 35-44.1-1-4 states as follows:

“(b) A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(c) It is not an offense under this section if any of the following apply:

- (1) The public servant or the public servant’s dependent receives compensation through salary or an employment contract for:
  - (A) services provided as a public servant; or
  - (B) expenses incurred by the public servant as provided by law.
- (2) The public servant’s interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.
- (3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
- (4) The public servant:
  - (A) acts in only an advisory capacity for a state supported college or university; and
  - (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
- (5) A public servant under the jurisdiction of the state ethics commission (as provided in IC 4-2-6-2.5) obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
  - (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or

**CONFLICT OF INTEREST (Continued)**

- (B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest.
- (6) A public servant makes a disclosure that meets the requirements of subsection (d) or (e) and is:
  - (A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;
  - (B) appointed by an elected public servant;
  - (C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;
  - (D) elected; or
  - (E) a member of, or a person appointed by, the board of trustees of a state supported college or university.
- (7) The public servant is a member of the governing board of, or is a physician employed or contracted by, a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.
- (d) A disclosure must:
  - (1) be in writing;
  - (2) describe the contract or purchase to be made by the governmental entity;
  - (3) describe the pecuniary interest that the public servant has in the contract or purchase;
  - (4) be affirmed under penalty of perjury;
  - (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;
  - (6) be filed within fifteen (15) days after final action on the contract or purchase with:
    - (A) the state board of accounts; and
    - (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
  - (7) contain, if the public servant is appointed, with written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that appointed the public servant.

**CONFLICT OF INTEREST (Continued)**

(e) This subsection applies only to a person who is a member of, or a person appointed by, the board of trustees of a state supported college or university. A person to whom this subsection applies complies with the disclosure requirements of this chapter with respect to the person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the individual files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or purchase made with that particular vendor. The statement required by this subsection must be made on an annual basis."

A copy of the Uniform Conflict of Interest Disclosure Statement is enclosed with this edition for your reference.

**GAO INDEPENDENCE STANDARD**

The auditor independence provisions of the U. S. Government Accountability Office (GAO) are contained in its generally accepted government auditing standards (GAGAS).

The GAO issued such standards to better serve the public interest by maintaining a high degree of integrity, objectivity and independence for CPA's, and other practitioners who audit government entities and organizations receiving government funds.

Compliance with the standard hinges on the auditor's observance of two overarching principles and seven safeguards. The two overarching principles are critical to understanding the nonaudit service rules:

- (1) Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions.
- (2) Firms should neither audit their own work nor provide nonaudit services in situations where the nonaudit services are significant or material to the subject matter of audits.

If the nonaudit service would violate either of the two overarching principles, then the firm would be required to make a choice between providing the service or performing the audit.

Personal, external, and organizational factors can impair auditor independence, as well as personal impairments relating to nonaudit service.

**EQUITABLE SHARING AGREEMENT – U.S. DEPARTMENT OF JUSTICE**

Various law enforcement agencies, prosecutor's offices, those agencies that are part of a task force etc. may have an agreement with the U.S. Department of Justice for equitable sharing of forfeitures. As part of this the agencies submit an Equitable Sharing Agreement and Certification Report form OMB 1123-0011. A new question added on this year's form was the request for the e-mail address of the agency's independent auditor. It was decided that the e-mail address to use would be [lwilliamson@sboa.in.gov](mailto:lwilliamson@sboa.in.gov).

**PENSION PLANS**

In reviewing the Indiana Code, the following pension plans are available to employees of a city or town. Pursuant to IC 5-10.2-2-1, a city or town does not have authority to establish a pension plan by ordinance, resolution, or contract after January 1, 1995, without specific statutory authority.

	<u>Indiana Code</u>
Public Employees' Retirement Fund	5-10.3
Police Pension Fund – First Class Cities	36-8-7.5
1925 Police Pension Fund	36-8-6
1937 Firefighter's Pension Fund	36-8-7
1977 Police Officers' and Firefighters' Pension & Disability Fund	36-8-8
Municipal Utility Employees' Pension Fund	8-1.5-3-7
City Hospitals - Third Class Cities	16-23-1-25(c)
Housing Authorities	36-7-18-10(d)
Department of Redevelopment	36-7-14-12.2(17)
Deferred Compensation	5-10-1.1

Inquiries relative to participation in the Public Employees' Retirement Fund should be directed to the Indiana Public Retirement System, One North Capital, Suite 001, Indianapolis, Indiana, 46204.

**POLITICAL SUBDIVISION LIENS - CIVIL SUITS**

A political subdivision acquires a lien on each tract of real property for:

- (1) all special assessments levied against the tract, including the land under an improvement or appurtenance described in IC 6-1.1-2-4(b); and
- (2) all subsequent penalties and costs resulting from the special assessments.

The lien attaches on the installment due date of the year for which the special assessments are certified for collection. The lien is not affected by any sale or transfer of the tract, including the land under an improvement or appurtenance described in IC 6-1.1-2-4(b), and including the sale, exchange, or lease of the tract under IC 36-1-11.

The lien of the political subdivision for special assessments, penalties, and costs continues for ten (10) years from May 10 of the year in which special assessments first become due. However, if any proceeding is instituted to enforce the lien within the ten (10) year period, the limitation is extended, if necessary, to permit the termination of the proceeding.

The lien of the state inures to political subdivisions that impose the special assessments on which the lien is based, and the lien is superior to all other liens except the lien of the state for property taxes.

A political subdivision described in IC 6-1.1-22-13.5(c) may institute a civil suit against a person or an entity liable for delinquent special assessments. The political subdivision may, after obtaining a judgment, collect:

- (1) delinquent special assessments;
- (2) penalties due to the delinquency; and
- (3) costs and expenses incurred in collecting the delinquent special assessments, including reasonable attorney's fees and court costs approved by a court with jurisdiction. [IC 6-1.1-22-13.5]



**UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT**

State Form 54266 (R / 6-12) / Form 236  
STATE BOARD OF ACCOUNTS

**Indiana Code 35-44.1-1-4**

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. **Name and Address of Public Servant Submitting Statement:** \_\_\_\_\_  
\_\_\_\_\_

2. **Title or Position With Governmental Entity:** \_\_\_\_\_

3. a. **Governmental Entity:** \_\_\_\_\_

b. **County:** \_\_\_\_\_

4. **This statement is submitted (check one):**

a.  as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b.  as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. **Name(s) of Contractor(s) or Vendor(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. **Description(s) of Contract(s) or Purchase(s)** *(Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.):*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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